

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DAVID BENNETT,  
Plaintiff,

v.

PROP. 47 PUBLIC DEFENDER, et al.,  
Defendants.

Case No. 19-08166 BLF (PR)

**ORDER GRANTING MOTION FOR  
RECONSIDERATION IN PART;  
REFERRING MATTER TO  
FEDERAL PRO SE PROGRAM FOR  
LIMITED APPOINTMENT OF  
COUNSEL**

(Docket No. 15)

Plaintiff, a California inmate, filed the instant *pro se* civil rights action pursuant to 42 U.S.C. § 1983, seeking money damages for unlawful confinement. Dkt. No. 1. The Court dismissed the complaint with leave to amend, for Plaintiff to provide proof that a conviction has been invalidated and therefore not barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). Dkt. No. 7. When Plaintiff failed to file an amended complaint in the time provided, the Court dismissed the action. Dkt. No. 9. The Court later granted Plaintiff's motion for reconsideration of the dismissal and reopened the matter. Dkt. No. 14. In the same order, the Court denied Plaintiff's motions for injunctive relief against Butte County Jail and for appointment of counsel or a guardian *ad litem* pursuant to Federal Rule of Civil Procedure 17(c). *Id.*

Plaintiff has filed a motion for reconsideration of the Court's denial of appointment counsel and injunctive relief, and also requests an extension of time to file an amended complaint. Dkt. No. 15. Plaintiff asserts that he has been found incompetent to stand trial, and provides a copy of an order issued by Superior Court of Butte County on July 20, 2020, stating that Plaintiff is to be committed to the Department of State Hospitals and alternative a jail based competency treatment program. *Id.* at 3-4, 12. The Court finds that this document raises a "substantial question" regarding Plaintiff's mental incompetence and therefore triggers the court's duty of inquiry under Rule 17(c). *See Allen v. Calderon*, 408 F.3d 1150, 1153 (9th Cir. 2005); *see also Powell v. Symons*, 680 F.3d 301, 307 (3d Cir. 2012); *Ferrelli v. River Manor Health Care Center*, 323 F.3d 196, 203 (2d Cir. 2003).

The Court will refer the matter for appointment of counsel for the limited purpose of representing Plaintiff in connection with proceedings to determine whether to appoint a conservator/guardian *ad litem* to represent him pursuant to Federal Rule of Civil Procedure 17. Once the Court resolves whether a conservator/guardian *ad litem* should be appointed, the Court will then decide whether to refer the action to the Federal Pro Se Program to find counsel for the remainder of the action.

Plaintiff also moves for reconsideration of the Court's denial of injunctive relief against Butte County Jail. Dkt. No. 15 at 7. Plaintiff asserts that he is entitled to injunctive relief because he has tested positive for COVID-19 and his life is in danger. *Id.* But as the Court explained in its previous order, Plaintiff is attempting to assert new claims against new Defendants which are unrelated to the underlying claim in this action. Dkt. No. 14 at 2. He must file a separate action to challenge conditions of confinement at the Butte County Jail as such relief is beyond the scope of this action.<sup>1</sup> Accordingly, the motion for reconsideration in this regard is DENIED.

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<sup>1</sup> If Plaintiff chooses to pursue such an action, he must do so in the Eastern District of California which has jurisdiction over Butte County. *See* 28 U.S.C. § 84(b).

1 **CONCLUSION**

2 For the foregoing reasons, the Court orders as follows:

3 1. This matter is referred to Kevin Knestrick of the Federal Pro Se Program to  
 4 find counsel for the limited purpose discussed above. Upon an attorney being located to  
 5 represent Plaintiff, that attorney shall be appointed as counsel for Plaintiff in this action **for**  
 6 **the limited purpose of representing Plaintiff in connection with proceedings to**  
 7 **determine whether to appoint a conservator/guardian *ad litem* to represent him**  
 8 **pursuant to Federal Rule of Civil Procedure 17, unless the attorney volunteers**  
 9 **otherwise.**

10 2. The Clerk shall forward to the Federal Pro Se Program: (1) a copy of this  
 11 order, (2) a copy of the docket sheet, and (3) a copy of the operative complaint and  
 12 relevant court orders.


13 3. All proceedings in this action are stayed until further notice. As such,  
 14 Plaintiff's motion for an extension of time to file an amended complaint is **DENIED** as  
 15 moot. The Court will set a new schedule once the state of Plaintiff's competency has been  
 16 determined.

17 4. Plaintiff's motion for reconsideration of the denial of injunctive relief against  
 18 Butte County Jail is **DENIED**.

19 This order terminates Docket No. 15.

20 **IT IS SO ORDERED**

21 Dated: October 7, 2020

22   
 23 BETH LABSON FREEMAN  
 24 United States District Judge

25 Order Referring Matter to FPSP  
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